

By: Toth

H.B. No. 21

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for the sterilization, castration, or genital mutilation of children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 74, Civil Practice and Remedies Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. LIABILITY FOR STERILIZATION, CASTRATION, OR GENITAL MUTILATION OF CHILDREN

Sec. 74.601. CAUSE OF ACTION. Notwithstanding any other law, a person is strictly and jointly and severally liable to an individual for personal injury to the individual resulting from knowingly:

(1) prescribing puberty blockers or hormone therapy to a minor for the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex;

(2) performing a sex-change operation on a minor; or

(3) aiding or abetting the conduct described by Subdivision (1) or (2).

Sec. 74.602. STANDING AND DAMAGES. Notwithstanding any other law, an individual described by Section 74.601 may bring an action under this subchapter and is entitled to recover in the action:

1           (1) nominal damages;

2           (2) compensatory damages;

3           (3) exemplary damages in an amount of not less than \$10  
4 million from each defendant if the conduct that is the basis for the  
5 action resulted in the individual's irreversible sterilization or  
6 sexual dysfunction; and

7           (4) costs and reasonable attorney's fees incurred in  
8 bringing the action.

9           Sec. 74.603. LIMITATIONS. Notwithstanding any other law, a  
10 person may bring an action under this subchapter not later than the  
11 20th anniversary of the date the cause of action accrues.

12           Sec. 74.604. DEFENSES. (a) A defendant against whom an  
13 action is brought under this subchapter may assert as an  
14 affirmative defense to liability that:

15           (1) the imposition of civil liability on the defendant  
16 will violate constitutional or federally protected rights that  
17 belong to the defendant personally; or

18           (2) the defendant:

19                   (A) has standing to assert the rights of a third  
20 party under the tests for third-party standing established by the  
21 United States Supreme Court; and

22                   (B) demonstrates that the imposition of civil  
23 liability on the defendant will violate constitutional or federally  
24 protected rights belonging to that third party.

25           (b) Notwithstanding any other law, the following are not a  
26 defense to an action brought under this subchapter:

27           (1) ignorance or mistake of law;

1           (2) a defendant's belief that the requirements or  
2 provisions of this subchapter are unconstitutional or were  
3 unconstitutional;

4           (3) a defendant's reliance on a court decision that has  
5 been vacated, reversed, or overruled on appeal or by a subsequent  
6 court, even if that court decision had not been vacated, reversed,  
7 or overruled when the cause of action accrued;

8           (4) a defendant's reliance on any state or federal  
9 court decision that is not binding on the court in which the action  
10 has been brought;

11           (5) a defendant's reliance on any federal statute,  
12 agency rule or action, or treaty that has been repealed,  
13 superseded, or declared invalid or unconstitutional, even if that  
14 federal statute, agency rule or action, or treaty had not been  
15 repealed, superseded, or declared invalid or unconstitutional when  
16 the cause of action accrued;

17           (6) non-mutual issue preclusion or non-mutual claim  
18 preclusion;

19           (7) the consent to the defendant's conduct that is the  
20 basis of the action by:

21                   (A) the claimant;

22                   (B) one or both of the parents of the claimant if  
23 the claimant was an unemancipated minor; or

24                   (C) the legal guardian or conservator of the  
25 claimant;

26           (8) contributory or comparative negligence;

27           (9) assumption of risk;

1           (10) sovereign immunity, governmental immunity,  
2 official immunity, or qualified immunity;

3           (11) the claimant's waiver or purported waiver of the  
4 claimant's right to bring the action;

5           (12) the claimant's failure to exhaust administrative  
6 remedies; or

7           (13) a claim that the enforcement of this subchapter  
8 or the imposition of civil liability against the defendant will  
9 violate the constitutional rights of third parties, except as  
10 provided by Subsection (a)(2).

11          (c) A civil action under this subchapter may not be brought  
12 against a person that acted at the behest of a federal agency,  
13 contractor, or employee who is carrying out duties under federal  
14 law if the imposition of liability would violate the doctrines of  
15 preemption or intergovernmental immunity.

16          (d) Nothing in this section or subchapter shall limit or  
17 preclude a defendant from asserting the unconstitutionality of any  
18 provision or application of a law of this state as a defense to  
19 liability, or from asserting any other defense that might be  
20 available under any other source of law.

21          Sec. 74.605. LONG-ARM JURISDICTION. Notwithstanding any  
22 other law, including Subchapter C, Chapter 17, the courts of this  
23 state have personal jurisdiction over a defendant sued under this  
24 subchapter to the maximum extent permitted by the Fourteenth  
25 Amendment to the United States Constitution.

26          Sec. 74.606. VENUE. (a) Notwithstanding any other law,  
27 including Chapter 15, a civil action brought under this subchapter

1 must be brought in:

2 (1) the county in which all or a substantial part of  
3 the events or omissions giving rise to the claim occurred;

4 (2) the county of residence for any one of the natural  
5 person defendants at the time the cause of action accrued;

6 (3) the county of the principal office in this state of  
7 any one of the defendants that is not a natural person; or

8 (4) the county of residence for the claimant if the  
9 claimant is a natural person residing in this state.

10 (b) Notwithstanding any other law, if a civil action is  
11 brought under this subchapter in a venue described by Subsection  
12 (a), the action may not be transferred to a different venue without  
13 the written consent of all parties.

14 (c) Any contractual provision that purports to require a  
15 civil action under this subchapter to be litigated in another venue  
16 is void as against public policy, and may not be enforced in any  
17 state or federal court.

18 Sec. 74.607. CHOICE OF LAW. (a) Notwithstanding any other  
19 law, the law of this state applies to any gender-transitioning  
20 treatment provided to a resident of this state, regardless of where  
21 that treatment occurs, and to any civil action brought under this  
22 subchapter, to the maximum extent permitted by the United States  
23 Constitution and the Texas Constitution.

24 (b) Any contractual choice of law provision that purports to  
25 require the law of another jurisdiction to govern a civil action  
26 brought under this subchapter is void as against public policy and  
27 may not be enforced in any state or federal court.

1        (c) This section applies extraterritorially to the maximum  
2 extent permitted by the United States Constitution and the Texas  
3 Constitution.

4        Sec. 74.608. PRIVATE ENFORCEMENT EXCLUSIVE.  
5 Notwithstanding any other law, direct or indirect enforcement of  
6 this subchapter may not be taken or threatened by the state, a  
7 political subdivision, a district or county attorney, or an officer  
8 of this state or a political subdivision against any person by any  
9 means, and this subchapter may not be used to justify or trigger the  
10 enforcement of any other law or any type of adverse consequence  
11 under any other law, except as provided by this subchapter. This  
12 section does not preclude or limit the enforcement of any other law  
13 or regulation against conduct that is independently prohibited by  
14 the law or regulation and that would remain prohibited by such other  
15 law or regulation in the absence of this subchapter.

16        Sec. 74.609. IMMUNITY FROM SUIT. (a) Subject to Subsection  
17 (b) but notwithstanding any other law, the state has sovereign  
18 immunity, a political subdivision has governmental immunity, and an  
19 officer or employee of this state or a political subdivision has  
20 official immunity, as well as sovereign or governmental immunity,  
21 as appropriate, in any action, claim, counterclaim, or any type of  
22 legal or equitable action that:

23                (1) challenges the validity of any provision or  
24 application of this subchapter, on constitutional grounds or  
25 otherwise; or

26                (2) seeks to prevent or enjoin the state, a political  
27 subdivision, or an officer or employee of this state or a political

1 subdivision from:

2 (A) enforcing any provision or application of  
3 this subchapter; or

4 (B) hearing, adjudicating, or docketing a civil  
5 action brought under this subchapter.

6 (b) Subsection (a) does not apply to the extent that  
7 immunity has been abrogated or preempted by federal law in a manner  
8 consistent with the United States Constitution.

9 (c) The sovereign immunity conferred by this section on the  
10 state and its officers and employees includes the constitutional  
11 sovereign immunity recognized by the United States Supreme Court,  
12 which applies in both state and federal court and may not be  
13 abrogated by Congress or by a state or federal court except under  
14 legislation authorized by:

15 (1) Section 5 of the Fourteenth Amendment, United  
16 States Constitution;

17 (2) the Bankruptcy Clause of Article I, United States  
18 Constitution; or

19 (3) Congress's powers to raise and support armies and  
20 to provide and maintain a navy.

21 (d) Notwithstanding any other law, the immunities conferred  
22 by Subsection (a) shall apply in every court, both state and  
23 federal, and in every type of adjudicative proceeding.

24 (e) Notwithstanding any other law, a provision of state law  
25 may not be construed to waive or abrogate an immunity described by  
26 Subsection (a) unless it expressly waives or abrogates immunity  
27 with specific reference to this section.

1        (f) Notwithstanding any other law, an attorney representing  
2 the state, a political subdivision, or an officer, employee, or  
3 agent of this state or a political subdivision may not waive an  
4 immunity described by Subsection (a) or take an action that would  
5 result in a waiver of that immunity. A purported waiver or action  
6 described by this subsection is void and considered an ultra vires  
7 act.

8        Sec. 74.610. LIMITS ON STATE COURT JURISDICTION. (a)  
9 Notwithstanding any other law, including Chapter 37 of this code  
10 and Sections 22.002, 22.221, 24.007, 24.008, 24.009, 24.010, and  
11 24.011, Government Code, a court of this state may not award  
12 declaratory or injunctive relief, or any type of writ, that would:

13                (1) pronounce any provision or application of this  
14 subchapter invalid or unconstitutional; or

15                (2) restrain the state, a political subdivision, an  
16 officer, employee, or agent of this state or a political  
17 subdivision, or any person from:

18                        (A) enforcing any provision or application of  
19 this subchapter; or

20                        (B) hearing, adjudicating, docketing, or filing  
21 a civil action brought under this subchapter.

22        (b) A court of this state does not have jurisdiction to  
23 consider an action, claim, or counterclaim that seeks relief  
24 described by Subsection (a).

25        (c) This subchapter may not be construed to prevent a  
26 litigant from asserting the invalidity or unconstitutionality of a  
27 provision or application of this subchapter as a defense to an



1 action, claim, or counterclaim brought against the litigant.

2 (d) Notwithstanding any other law, judicial relief issued  
3 by a court of this state that disregards immunity conferred by  
4 Section 74.609(a) or the jurisdictional limitations imposed by this  
5 section:

6 (1) is void because the court is without jurisdiction;  
7 and

8 (2) may not be enforced or obeyed by an officer,  
9 employee, or agent of this state or a political subdivision,  
10 judicial or otherwise.

11 (e) Notwithstanding any other law, a writ, injunction, or  
12 declaratory judgment issued by a court of this state that purports  
13 to restrain the state, a political subdivision, an officer,  
14 employee, or agent of this state or a political subdivision, or any  
15 person from hearing, adjudicating, docketing, or filing a civil  
16 action brought under this subchapter is void and may not be enforced  
17 or obeyed by an officer, employee, or agent of this state or a  
18 political subdivision, judicial or otherwise.

19 (f) Notwithstanding any other law, an officer, employee, or  
20 agent of this state or a political subdivision, judicial or  
21 otherwise, who issues, enforces, or obeys a writ, injunction, or  
22 declaratory judgment described by Subsection (a) is liable to any  
23 person who is prevented from or delayed in bringing a civil action  
24 under this subchapter. A claimant who prevails in an action brought  
25 under this subsection is entitled to:

26 (1) injunctive relief;

27 (2) compensatory damages;

1           (3) exemplary damages of not less than \$100,000; and

2           (4) costs and reasonable attorney's fees.

3           (g) Notwithstanding any other law, a person who violates  
4 Subsection (a) or (e):

5           (1) may not assert and is not entitled to any type of  
6 immunity defense, including sovereign immunity, governmental  
7 immunity, official immunity, or judicial immunity;

8           (2) may not be indemnified for an award of damages or  
9 costs and attorney's fees entered against the person or for the  
10 costs of the person's legal defense; and

11           (3) may not receive or obtain legal representation  
12 from the attorney general of this state in an action brought against  
13 the person under Subsection (f).

14           (h) Notwithstanding any other law, a person who brings an  
15 action and seeks any writ, injunction, or declaratory judgment that  
16 would restrain any person from hearing, adjudicating, docketing, or  
17 filing a civil action brought under this subchapter shall pay the  
18 costs and attorney's fees of the person against whom the action is  
19 brought. A person entitled to recover costs and attorney's fees  
20 under this subsection may bring a civil action to recover these  
21 costs and attorney's fees in state or federal court. It is not a  
22 defense to a civil action brought under this subsection that:

23           (1) the claimant failed to seek recovery of costs or  
24 attorney's fees in the underlying action;

25           (2) the court in the underlying action declined to  
26 recognize or enforce the requirements of this section; or

27           (3) the court in the underlying action held that any

1 provision of this section is invalid, unconstitutional, or  
2 preempted by federal law, notwithstanding the doctrines of issue or  
3 claim preclusion.

4       SECTION 2. Subchapter M, Chapter 74, Civil Practice and  
5 Remedies Code, as added by this Act, applies only to a cause of  
6 action that accrues on or after the effective date of this Act.

7       SECTION 3. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect on the 91st day after the last day of the  
12 legislative session.